

JAMES M. WAGSTAFFE (95535)
wagstaffe@kerrwagstaffe.com
MICHAEL VON LOEWENFELDT (178665)
mvl@kerrwagstaffe.com
MICHAEL NG (237915)
ng@kerrwagstaffe.com
KELLY A. CORCORAN (260268)
corcoran@kerrwagstaffe.com
KERR & WAGSTAFFE LLP
100 Spear Street, Suite 1800
San Francisco, CA 94105-1528
Telephone: (415) 371-8500
Fax: (415) 371-0500

Attorneys for Plaintiffs
JEFFREY HERSON AND EAST BAY
OUTDOOR, INC.

RANDY RIDDLE (121788)
CITY ATTORNEY
KEVIN SCOTT DICKEY (184251)
CHIEF DEPUTY CITY ATTORNEY
CITY OF RICHMOND
450 Civic Center Plaza
Richmond, CA 94804-1630
Telephone: (510) 620-6509
Facsimile: (510) 620-6518
randy.riddle@ci.richmond.ca.us

ANDREW W. SCHWARTZ (87699)
MATTHEW D. ZINN (214587)
WINTER KING (237958)
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Schwartz@smwlaw.com
Zinn@smwlaw.com
King@smwlaw.com

Attorneys for Defendant
CITY OF RICHMOND

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY HERSON, an individual;
EAST BAY OUTDOOR, INC., a California
corporation,

Plaintiffs,

vs.

CITY OF RICHMOND, a charter city,

Defendant.

Case No. 3:09-cv-02516-PJH

**STIPULATION REQUESTING
CLARIFICATION/
RECONSIDERATION OF
PARAGRAPH 4 OF
AUGUST 17, 2009 ORDER**

Honorable Phyllis J. Hamilton

1 On August 5, 2009, the Court denied the plaintiffs' motion for preliminary injunction.
 2 This stipulation is not intended to affect that denial, and does not constitute a waiver or alteration
 3 by either side of their position on that motion. On August 17, 2009, the Court issued a further
 4 order reiterating its denial of the motion for preliminary injunction and dismissing Plaintiffs'
 5 claims in their entirety. This stipulation is not directed at the Court's rulings on Plaintiffs'
 6 prospective relief claims in either the August 5 or August 17 orders.

7 At the hearing on the motion for preliminary injunction, the parties both noted that the
 8 repeal of the challenged ordinance and the enactment of the temporary moratorium ordinance
 9 does not moot the plaintiffs' damage claims as originally pleaded in the case. See Outdoor
 10 Media Group v. City of Beaumont, 506 F.3d 895, 902-03 (9th Cir. 2007). Only the claims for
 11 prospective relief are affected by the statutory change.

12 Moreover, at the hearing on the motion for preliminary injunction, the Court appeared to
 13 agree with the parties that plaintiffs could wait until after the enactment of the forthcoming sign
 14 ordinance intended to replace the moratorium ordinance before filing a supplemental complaint.
 15 The Court stated that the parties could meet and confer on an appropriate schedule.

16 The parties have reviewed the Court's August 17, 2009 Order and respectfully submit
 17 that it contains two rulings inconsistent with the above.

18 First, the Court appears to have *sua sponte* dismissed the entire case as moot. Such relief
 19 was not sought by defendants, who concede that under current Ninth Circuit law the damage
 20 claims are not moot. The damage claims should not have been dismissed based on the repeal of
 21 the challenged ordinance and the enactment of the temporary moratorium ordinance.

22 Second, the Court set a date to file an amended complaint by September 18, 2009. The
 23 City will not have enacted its new Sign Ordinance by that time.

24 ///

25 ///

26 ///

27 ///

28 ///

Accordingly, the parties respectfully request the following relief:

1. That the Court's August 17, 2009 order be revised *nunc pro tunc* so that plaintiffs' claims for damages are not found to be moot and are not dismissed.

2. That the Court allow the plaintiffs until 30 days after the City enacts a replacement Sign Ordinance to supplement and amend their complaint.

DATED: August 19, 2009

KERR & WAGSTAFFE LLP

By /s/
Michael von Loewenfeldt

Attorneys for Plaintiffs
JEFFREY HERSON AND EAST BAY
OUTDOOR, INC.

DATED: August 19, 2009

SHUTE, MIHALY & WEINBERGER, LLP

By /s/
Matthew D. Zinn

Attorneys for Defendant,
CITY OF RICHMOND

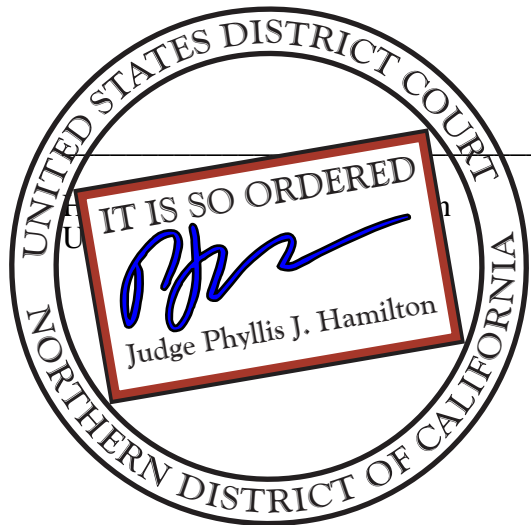
~~[PROPOSED]~~ **ORDER**

Pursuant to stipulation, and good cause appearing, IT IS HEREBY ORDERED THAT:

1. The Court's August 17, 2009 order is revised *nunc pro tunc* so that plaintiffs' claims for damages are not found to be moot and are not dismissed.
2. Plaintiffs shall have until 30 days after the City enacts a replacement Sign Ordinance to supplement and amend their complaint.

IT IS SO ORDERED.

DATED: 9/10/09



1 I, Michael von Loewenfeldt, am the ECF User whose ID and password are being used to
2 file this Stipulation and Proposed Order re Clarification/Reconsideration of Paragraph 4 of the
3 August 17, 2009 Order. In compliance with General Order 45, X.B., I hereby attest that
4 Matthew D. Zinn of Shute, Mihaly & Weinberger, LLP, Attorneys for the City of Richmond, has
5 concurred in this filing.

6
7 DATED: August 19, 2009

8 **KERR & WAGSTAFFE LLP**

9
10 By s/
Michael von Loewenfeldt

11 Attorneys for Plaintiffs
12 JEFFREY HERSON AND EAST BAY
13 OUTDOOR, INC.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28